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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,982	03/13/2001	Frederick J. Fritz	2506.2008-005	2631

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EXAMINER

NI, SUHAN

ART UNIT	PAPER NUMBER
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2643

DATE MAILED: 07/19/2004

11

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/804,982

Applicant(s)

FRITZ ET AL.

Examiner

Suhan Ni

Art Unit

2643

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
4a) Of the above claim(s) 15-40 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-14, 41-42 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4, 6, 8.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This communication is responsive to the election and amendment filed 04/19/2004.
2. A provisional election was made without traverse to prosecute the invention of Group I, claims 1-14 and 41-42. Groups, claims 15-40 are withdrawn from further consideration by the applicant, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R.1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-14 and 41-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U. S. Patent No. 5,881,159.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-10 of U. S. Patent No. 5,881,159 are similar in scope to claim 1-14 and 41-42 of this application with obvious wording variations.

4. Claims 1-14 and 41-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U. S. Patent No. 6,473,511.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-14 of U. S. Patent No. 6,473,511 are similar in scope to claim 1-14 and 41-42 of this application with obvious wording variations.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 1, 8, 10 and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Knapp (U. S. Pat. - 5,253,300).

Regarding claims 1 and 10, Knapp discloses a hearing aid (15) having a shell (16) enclosing one or more hearing aid components, the shell including at least a substantially tinted, translucent or transparent faceplate (17).

Regarding claim 8, Knapp further discloses the hearing aid, wherein the hearing aid components include a microphone (28), signal processing circuitry (33), a power source (41), or a receiver (36).

Regarding claim 13, Knapp further discloses the hearing aid, wherein the hearing aid is a behind-the-ear type hearing aid (Figs. 13-14).

Regarding claim 14, Knapp further discloses the hearing aid, wherein the hearing aid is insertable into an ear canal (Figs. 1-2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-7, 9, 11-12 and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knapp (U. S. Pat. - 5,253,300).

Regarding claims 3, 6-7, 9, 11-12 and 41-42, Knapp does not clearly teach all the details of tinting many part of the hearing aid as claimed. Since providing a suitable color for tinting component of a hearing aid is very well known in the art, it therefore would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to provide a suitable color for tinting component, such as a control device on the faceplate for the hearing aid, in order to make the hearing aid less noticeable when in used by a user.

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Regarding claim 2, Knapp further discloses the hearing aid, wherein the hearing aid is insertable into an ear canal.

Regarding claims 4-5, Knapp does not clearly teach all the details of the hearing aid as claimed. Since providing one or more suitable mechanical details for a hearing aid is very well known in the art, it therefore would have been obvious to one having ordinary skill in the art at the time the invention was made to be motivated to one or more suitable mechanical details, such a pull-cord for the hearing aid, in order to make the hearing aid easier to use.


Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is (703)-308-9322, and the number for fax machine is (703)-305-9508. The examiner can normally be reached on Monday through Thursday from 9:00 am to 7:30 pm. If it is necessary, the examiner's supervisor, **Curtis Kuntz**, can be reached at (703) 305-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305-3900.

SN

July 11, 2004


SUHAN NI
PRIMARY EXAMINER